

The opinion in support of the decision being  
entered today is not binding precedent of the Board.

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Paper No. 85

Filed by: Michael P. Tierney  
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Filed  
March 28, 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

**FAXED**

SCOTT C. CHAPPEL  
Junior Party,  
(U.S. Patent No. 5,272,071),

**MAR 28 2003**

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

v.

ARTHUR I. SKOULTCHI  
Senior Party,  
(Application 08/102,390).

Patent Interference No. 103,737 (MPT)

**TERMINATION**

The parties have filed a joint statement requesting that the interference be redeclared. (Paper No. 85). The request sets forth various reasons for redeclaring the interference. For example, since the interference was declared: 1) the rules and practice before the Board of Patent Appeals and Interferences has changed; 2) the Federal Circuit has provided further guidance with respect to the issues raised by the parties; 3) the parties are aware of new evidence that was not previously available to the parties.

Declaration of the Interference and Subsequent Redeclaration by Trial Section

This interference was declared on March 22, 1996 between Chappel, U.S. Patent No. 5,272,071 ("071") and Skoultchi, U.S. Application No. 08/102,390 ("390"). (Notice Declaring Interference, Paper No. 1). Applied Research Systems ARS Holding, N.V., which is a subsidiary of Ares-Serono S.A., is the real party in interest in Chappel '071. (Paper No. 80). Cell Genesys, Inc. is the real party in interest for Skoultchi '390. (Paper No. 77).

In accordance with 37 C.F.R. §1.610(c), an APJ set times in the interference for filing motions under Rule 633(a), unpatentability, and (g), attacking accorded priority benefit. (April 12, 1996 Order, Paper No. 10). Pursuant to the APJ's order, the parties' filed various preliminary motions with the understanding that preliminary motions outside the scope of the APJ's order would be filed at a later date.

On February 7, 2003, the interference was transferred to the Trial Section and redeclared to implement Trial Section procedures and Standing Orders. (Paper No. 75). Shortly after redeclaring the interference, Chappel's counsel requested a conference call.

Termination and Declaration of a New Interference

The APJ and the parties have conducted several conference calls in an effort to determine a "just, speedy and inexpensive" manner by which this interference can be completed. During the conference calls, the APJ questioned the sufficiency of the evidence submitted by the parties in support of their motions and noted that the intervening issuance of Skoultchi's U.S. Patent No. 5,981,214 may have effect upon the issues raised in the interference. Additionally, the APJ noted that the interference has significantly exceeded the normal two year pendency. 37 C.F.R. §1.610(c).

As set forth in the parties joint statement (Paper No. 85), a new interference employing Trial Section procedures from the beginning will provide an efficient and just determination on the underlying question of priority of invention between the two real parties in interest. A new interference will allow the parties the opportunity to fully and fairly brief the issues of concern and afford the parties an opportunity to file the necessary evidence in support of their allegations.

Accordingly, this interference is terminated without prejudice and a new interference is declared (Interference No. 105,114).

It is:

**ORDERED** that Interference No. 103,737 is terminated without prejudice to Chappel, U.S. Patent No. 5,272,071 and Skoultchi, U.S. Application No. 08/102,390.

**FURTHER ORDERED** that a copy of this final decision shall be placed and given a paper number in the file of Chappel, U.S. Patent No. 5,272,071 and Skoultchi, U.S. Application No. 08/102,390.



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Michael P. Tierney  
Administrative Patent Judge

cc: (Via facsimile only)

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